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SEARCHES BY SCHOOL OFFICIALS: THE DIMINISHING FOURTH AMENDMENT

INTRODUCTION

The right of school officials to conduct searches for prohibited items in the possession of students is a contemporary issue of particular concern to parents, school administrators, law enforcement officers, attorneys, and, of course, students.¹

This comment, which is based upon *In re Fred C.*² and three other recent California cases,³ examines the trends established by a line of cases pertaining to searches conducted by school officials. Three major doctrines for justifying the actions of administrators who undertake searches on school premises are considered. These are: 1) the doctrine of *in loco parentis*, 2) the emergency doctrine, and 3) the agency doctrine. Finally, a standard is suggested to insure that the constitutional rights of juveniles are protected whenever school officials conduct a search of a student who is suspected of possessing narcotics, especially when administrators solicit the assistance of a police officer to help with the investigation.

BACKGROUND—SIGNIFICANT PRIOR CASES IN CALIFORNIA AND IN OTHER JURISDICTIONS

Within the past few years, four California cases—one involving a search and seizure by police and credit card agents and the others concerning searches by school officials which resulted in the discovery of drugs—have provided a background for *In re Fred C.*

Although not involving a juvenile suspect, *Stapleton v. Superior Court*⁴ concerned the warrantless search of an auto by police and credit card agents. Because the search of the defendant's automobile was clearly part of a joint operation by police and credit card agents, the official police participation in planning

1. For a general discussion of criminal investigations in the schools see Knowles, *Criminal Investigation in the School: Its Constitutional Dimensions*, 4 J. FAM. LAW 151-74 (1964) [hereinafter cited as Knowles].

2. 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (1972).

3. *People v. Lanthier*, 5 Cal. 3d 751, 488 P.2d 625, 97 Cal. Rptr. 297 (1971); *In re Thomas G.*, 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970); *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969).

4. 70 Cal. 2d 97, 447 P.2d 967, 73 Cal. Rptr. 575 (1968).

and implementing the investigation was held to constitute sufficient state action to render the evidence inadmissible.⁵

This case emphasized the distinction between a search conducted by a private citizen, to whom the fourth and fourteenth amendments do not apply,⁶ and a search conducted by the police, which constitutes state action and renders constitutional protections applicable.⁷ Furthermore, the *Stapleton* holding is readily extended to the school cases: if the search is conducted by a school official acting as a private citizen, the fourth amendment protections are not applicable; however, if there is sufficient police involvement to constitute state action, the student should be entitled to constitutional protection.

In re Donaldson—The Foundation for the In Loco Parentis Doctrine

*In re Donaldson*⁸ is the first of three recent California cases with fact situations similar to, but distinguishable from, *In re Fred C.* In *Donaldson*, a student informant identified the defendant to school administrators as the seller of methadrine pills. To secure evidence of student misconduct, the vice principal of the high school made a search without warrant or consent of the minor's school locker and discovered marijuana.

On appeal, the defendant contended that the school administrator is a government official within the meaning of the fourth

5. *Wolf v. Colorado*, 338 U.S. 25 (1949), held that the fourth amendment's prohibition against unreasonable searches and seizures applies to the states through the fourteenth amendment. Subsequently, *Mapp v. Ohio*, 367 U.S. 643 (1961), held that evidence which is obtained by procedures that violate the fourth amendment is inadmissible in state courts. The holding of *Burdeau v. McDowell*, 256 U.S. 465 (1921), that the fourth amendment does not apply to searches by private individuals was not disturbed by *Mapp*.

6. An unlawful search and seizure by a private person not employed by or associated with a government unit is not a violation of constitutional guarantees and evidence so obtained is admissible. *Burdeau v. McDowell*, 256 U.S. 465 (1921) (incriminating papers discovered in private office of company employee); *Miramontes v. Superior Court*, 25 Cal. App. 3d 877, 102 Cal. Rptr. 182 (1972) (airline agents discovered marijuana in footlocker shipped via air freight); *People v. Randazzo*, 220 Cal. App. 2d 768, 34 Cal. Rptr. 65 (1963), *cert. denied*, 377 U.S. 1000 (1964) (store detective observed theft of merchandise from retail store dressing room); *People v. Johnson*, 153 Cal. App. 2d 870, 315 P.2d 468 (1957) (employer discovered stolen merchandise in employee's car). See, Note, *Seizures by Private Parties: Exclusion in Criminal Cases*, 19 STAN. L. REV. 608-18 (1967).

7. In *People v. Fierro*, 236 Cal. App. 2d 344, 46 Cal. Rptr. 132 (1965), a motel manager acting under the direction of a sheriff's officer entered a guest's room and took powder-filled rubber balloons and a sample of white powder which was determined to be heroin. The court held the evidence inadmissible because the manager acted as the emissary of the sheriff's office.

8. 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969).

amendment. The prosecution argued that the vice principal stands *in loco parentis*,⁹ has joint control over the locker, and is a private person to whom the fourth amendment has no application. The *Donaldson* court found no joint operation by police and school officials¹⁰ and held that the vice principal was not a government official within the meaning of the fourth amendment and that the search conducted for the purpose of securing evidence of student misconduct was not unreasonable.¹¹ The court also held that the school stands *in loco parentis* and concluded that the trial court did not err in admitting into evidence the marijuana discovered by the vice principal.¹² Because the vice principal was acting as a private citizen, not as the agent of a state or other government unit, the evidence was deemed properly admissible.¹³

Although *Donaldson* is a foundation case for justifying searches conducted by school officials who act as private citizens and who stand *in loco parentis*, the holding of this case appears to provide weak reasoning for the precedent. The opinion does include references to cases which support the argument that the vice principal acted as a private citizen to whom the fourth amendment does not apply;¹⁴ however, the court does not rely

9. *In loco parentis* suggests that the school official is acting, literally, in the place of the parent. See Annot. 443 A.L.R.2d 473, 474 (1972), 79 C.J.S. *Control of Pupils and Discipline* § 493 (1952). Knowles, *supra* note 1, at 152 n.1, states:

Actually the phrase *in loco parentis* expresses nothing save that the school has certain rights and duties to children in its care. When a court rules that a certain act by a school official is performed *in loco parentis* the court is actually concluding that the act was permissible. When a court rules that an official superseded his powers *in loco parentis*, the court is ruling that the specific act was not legally permissible. Most simply, the phrase *in loco parentis* is no guide to action, but solely a conclusionary label attached to permissible school controls.

10. 269 Cal. App. 2d at 511, 75 Cal. Rptr. at 221.

11. The *Donaldson* court stated:

Such school official is one of the school authorities with an obligation to maintain discipline in the interest of a proper and orderly school operation, and the primary purpose of the school official's search was not to obtain convictions, but to secure evidence of student misconduct. That evidence of crime is uncovered and prosecution results therefrom should not of itself make the search and seizure unreasonable. *Id.* at 511-12, 75 Cal. Rptr. at 222.

Accord, *People v. Chilton*, 239 Cal. App. 2d 329, 48 Cal. Rptr. 212 (1966) (search or arrest which is objectively justified on one ground is valid even though other objectives may have been improper).

12. Following the reasoning of *Donaldson*, a recent decision noted that school officials who stand in the place of parents do exercise considerable responsibility and control over their students but recognized that, at times, the power and responsibility granted to school authorities under the doctrine of *in loco parentis* will apparently conflict with fourth amendment guarantees. *In re Christopher W.*, 29 Cal. App. 3d 777, 780-81, 105 Cal. Rptr. 775, 777 (1973).

13. 269 Cal. App. 2d at 511-12, 75 Cal. Rptr. at 222.

14. *People v. Randazzo*, 220 Cal. App. 2d 768, 34 Cal. Rptr. 65, *cert. de-*

on any prior cases to support its holding that, because a school official stands *in loco parentis*, his shared parental right to obtain obedience extends to a search of the student's locker. In addition, it should be noted that the *Donaldson* decision was rendered by the court of appeal and that three justices dissented when the California Supreme Court denied a hearing.¹⁵

Texas took a stand similar to the *Donaldson* court in *Mercer v. Texas*,¹⁶ holding that a principal of a high school who demanded that the juvenile student disclose the contents of his pockets was acting *in loco parentis* and not as an arm of government. In *Mercer*, the dean of boys of the high school which the defendant attended received a tip from an informer that a student was in possession of marijuana. The principal called the student to his office, directed him to empty his pockets, and told him that his father would be called if he refused to comply with the request.¹⁷ When the student emptied his pockets, marijuana was discovered. The principal called the youth's father and then the police. The *Mercer* court implicitly relied on *Donaldson* to support its holding that because the principal was acting *in loco parentis* there was no violation of the student's fourth amendment rights.¹⁸

In a lengthy and impressive dissent, Justice Hughes argued that the *Mercer* holding extended the doctrine of *in loco parentis* to unconstitutional proportions.¹⁹ He agreed with statements in the opinion concerning the legal doctrine of *in loco parentis* but argued that the majority opinion did not follow the authorities espousing the doctrine.²⁰ Justice Hughes noted that the *Donaldson* case furnished only weak support for the *Mercer* court's holding that the principal was acting *in loco parentis*. In contrast, he mentioned that the public schools of Texas were created and function under a constitutional mandate and referred to Texas

nied, 377 U.S. 1000 (1963); *People v. Johnson*, 153 Cal. App. 2d 870, 315 P.2d 468 (1957).

15. Traynor, C.J., Peters and Tobriner, J.J., dissented.

16. 450 S.W.2d 715 (1970) cited in Note, *Search and Seizure: Is the School Official a Policeman or Parent?*, 22 BAYLOR L. REV. 554 (1970).

17. *C.f. Vandenberg v. Superior Court*, 8 Cal. App. 3d 1048, 87 Cal. Rptr. 876 (1970) (father's consent constituted sufficient authorization for a police search of his son's room, in spite of the son's objections).

18. 450 S.W.2d at 717 and 719. The court noted that unreasonable seizure undertaken through governmental action is forbidden by the fourth amendment but that constitutional protections are not violated by acts of individuals in which the government has no part. The court determined that when the principal demanded that the student disclose the contents of his pockets, he was acting not as an arm of the government but rather *in loco parentis*.

19. *Id.* at 718-22.

20. The majority cited: 1 BLACKSTONE, COMMENTARIES, 453; RESTATEMENT (SECOND) OF TORTS, §§ 152, 154 (1965); *Hailey v. Brooks*, 191 S.W. 781 (1916).

statutory provisions governing school employees to support his argument that the principal was acting within the scope of his duties as an employee of the state.²¹ Justice Hughes acknowledged that school authorities may use powers of control, restraint, and correction over pupils as may be reasonably necessary to enable them to perform their duties and to effect the general purpose of the educational system, but he believed that the *Mercer* investigation was a valid administrative search for school purposes only.

To refute the *in loco parentis* justification for the holding in *Mercer*, Justice Hughes stressed that the parents of students transferred only limited rights to public school authorities. If the student's parents had conducted a search similar to the one undertaken by the school administrators, they could have remained silent regarding the results of the search without incurring criminal liability, a right or privilege which the principal did not legally have. Although the parental right and privilege of determining whether evidence incriminating the child should be suppressed or used to deprive him of his liberty for a period of years could not be transferred to school authorities, Justice Hughes implied that the search might have been justified on other grounds. He concluded, however, that the holding of the *Mercer* majority expanded the doctrine of *in loco parentis* to unconstitutional dimensions.²²

In re Thomas G.

In *In re Thomas G.*,²³ another recent California case, a classmate reported to the high school dean of students that the defendant had taken a restricted dangerous drug and was possibly intoxicated in class. The dean and principal went to the classroom and asked the defendant to return with them to the dean's office. At the request of the principal, Thomas emptied his pockets. The contents included a film canister which, when opened by the dean, was found to contain amphetamine pills. The police were then called to the school, and juvenile court proceedings were initiated.²⁴

The court considered three options available to the dean of students: 1) make a citizen's arrest or call a peace officer for that purpose, 2) ignore the problem, or 3) conduct an informal investigation. The third alternative was considered best by the majority because this course of action avoided a disruption of school activities and discipline and insured a minimum adverse effect on the well-being of the student involved.²⁵ The court con-

21. 450 S.W.2d at 720.

22. *Id.* at 721-22.

23. 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970).

24. *Id.* at 1195, 90 Cal. Rptr. at 362.

25. *Id.* at 1196-97, 90 Cal. Rptr. at 362-63.

cluded that the conduct of the dean and principal "was reasonable and without Fourth Amendment taint"²⁶ and noted that a contention that the high school administrators were engaged in joint activity with a police officer in conducting the search was unsupported by the evidence.²⁷

In a similar case in New York, *People v. Stewart*,²⁸ a high school dean of boys received information from student informers that the defendant was in possession of narcotics, called the defendant to his office, directed him to empty his pockets, and discovered narcotic drugs. The dean immediately summoned a city policeman who arrested the youth and escorted him to the precinct. Claiming a violation of fourth amendment rights, the defendant attempted to suppress the introduction of the narcotics into evidence. The sole question was whether fourth amendment prohibitions against unreasonable searches and seizures were applicable to private persons who obtain evidence for criminal prosecutions.²⁹

In *Stewart*, the court noted that there was no "joint venture" between the dean and the police to assist a criminal prosecution and that, consequently, the dean was not a law enforcement official but rather an educator responsible for the safety and welfare of the students at the school.³⁰ The court further emphasized

26. *Id.* at 1199, 90 Cal. Rptr. at 364. To emphasize that fourth amendment protections are more restricted when applied to minors than when applied to adults, the court cited *Ginsberg v. New York*, 390 U.S. 629 (1968), in which the Court determined that the power of the State to control the conduct of children reaches beyond the scope of authority over adults and that people, including teachers, who are responsible for the well-being of children, are entitled to legal support to aid in discharging their duties.

The court in *Thomas G.* further cited *Prince v. Massachusetts*, 321 U.S. 158 (1944), which also recognized the state interest in protecting the welfare of children by upholding a statute prohibiting minors from selling religious periodicals. Support for the view of the *Thomas G.* court is found in several other cases: *In re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969), confirmed the right of school authorities to conduct searches and seizures; *Myers v. Arcata Union High School Dist.*, 269 Cal. App. 2d 549, 75 Cal. Rptr. 68 (1969), which was an action to compel reinstatement of a minor high school student suspended for violating dress policy, permitted school authorities to impose more stringent regulations on the constitutional rights of minors by holding that the school board could validly require the student to wear his hair at a shorter length; *Akin v. Board of Educ. of Riverside Unified School Dist.*, 262 Cal. App. 2d 161, 68 Cal. Rptr. 557 (1968), held that the power of the state to control the conduct of children reaches beyond the scope of authority over adults and that the imposition of reasonable restrictions or limits on the conduct of secondary students is permissible.

27. 11 Cal. App. 3d at 1197-99, 90 Cal. Rptr. at 363-64.

28. 63 Misc. 2d 601, 313 N.Y.S.2d 253 (1970).

29. *Id.* at 603, 313 N.Y.S.2d at 255-56.

30. *Id.* at 603, 313 N.Y.S.2d at 256. The court cited *Stapleton v. Superior Court*, 70 Cal. 2d 97, 447 P.2d 967, 73 Cal. Rptr. 575 (1969), in support of its holding. See discussion pp. 118-19, *supra*.

that, when a school official acts in the capacity of a private citizen without the involvement of police authorities, there is no violation of the rights of the defendant under the fourth amendment.³¹

The holdings in *Thomas G.* and *Stewart* further develop a trend toward viewing the fourth amendment prohibition against unreasonable searches and seizures as inapplicable to school officials when conducting searches on school premises, so long as police involvement occurs *subsequent* to the search.

Lanthier and Boykin—The Emergency Doctrine

In *People v. Lanthier*,³² in response to a complaint of a noxious odor emanating from somewhere in the study hall of a private university library, the supervisor of maintenance services and security guards conducted a warrantless search of defendant's locker. Inside the locker the supervisor discovered a briefcase containing numerous packets of material later determined to be marijuana. In an attempt to identify the contents of the briefcase, university officials secured professional advice by contacting the campus and local police.

Although routine administrative searches of private property for violations of local health or safety codes must be made with a warrant, the court recognized that under emergency circumstances of "compelling urgency," a warrantless search based on a citizen complaint was also reasonable.³³ In addition, the court

31. *Id.* at 605, 313 N.Y.S.2d at 257. The *Stewart* court noted that, whenever evidence is seized by a private person, without the knowledge or participation of any governmental agency, it is admissible in a criminal prosecution; however, if there is shown some involvement by a police agent who assisted in obtaining the evidence, such evidence is excluded.

32. 5 Cal. 3d 751, 488 P.2d 625, 97 Cal. Rptr. 297 (1971).

33. *Id.* at 755, 488 P.2d at 628, 97 Cal. Rptr. at 300. The *Lanthier* court cited *Camara v. Municipal Court*, 387 U.S. 523, 533 (1967) in which the Court held that routine administrative searches of private property for violations of local health or safety codes must be made with a warrant. However, the Court also indicated that dangerous conditions must be prevented or abated and recognized that the law has traditionally upheld prompt inspections, even without a warrant, in emergency situations. See e.g., *North American Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (1908) (seizure of unwholesome food); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory smallpox vaccination); *Compagnie Française de Navigation à Vapeur v. Louisiana State Bd. of Health*, 186 U.S. 380 (1902) (health quarantine).

People v. Howard, 21 Cal. App. 3d 997, 99 Cal. Rptr. 47 (1971), held that a search by airline freight agents of packages which emitted an unusual sweet odor and the subsequent discovery of marijuana was reasonable under an emergency situation. The court reasoned that, although as a common carrier the airline had a duty to transport the goods, carrying the packages with knowledge of their contraband contents would have constituted both a federal and state crime.

held that after the initial search, the action of the university officials in enlisting police assistance to identify the substance which they had discovered was also reasonable.³⁴

In an Illinois case, *In re Boykin*,³⁵ the assistant principal of a high school received a tip from an anonymous informant. However, in this instance, the informant indicated that the defendant was carrying a concealed weapon, not narcotics. The administrator sent for two police officers who accompanied him to a classroom. The student was brought into the hall where one of the officers removed a gun from his pants pocket.

The court ruled that, because of the nature of the potential danger from a concealed weapon, which differs from the danger in a narcotics case, the immediate search of the student by the police officer was reasonable and the evidence was admissible.³⁶

Although both *Lanthier* and *Boykin* relied on the same theory, the "emergency doctrine," it is obvious that the courts in these cases did not view the question of exigent circumstances in the same manner. *Lanthier*, involving a search for narcotics, did not present the same type of emergency situation as *Boykin*, where the potential danger from a concealed weapon provided a more compelling reason and stronger justification for reliance on the emergency doctrine.

BACKGROUND SUMMARY

The holdings in a series of recent California cases have developed important concepts pertaining to searches conducted by school officials. *Stapleton v. Superior Court*³⁷ emphasized the distinction between a search conducted by a private citizen and one conducted by the police which thus constitutes official state action. *In re Donaldson*,³⁸ which followed *Stapleton*, determined that a school official acted as a private citizen in conducting such a search. Moreover, the search was justified by the court under the doctrine of *in loco parentis*. *In re Thomas G.*³⁹ represented the continuing development of a trend which indicates that fourth amendment

34. 5 Cal. 3d at 757, 488 P.2d at 630, 97 Cal. Rptr. at 301. Compare *Lanthier* with *People v. Burke*, 61 Cal. 2d 575, 394 P.2d 67, 39 Cal. Rptr. 531 (1964), which emphasized that, where no emergency exists, compelling reasons and exceptional circumstances must justify a search in the absence of a warrant.

For a discussion of the right of private university officials to conduct searches, see Note, *Admissibility of Evidence Seized by Private University Officials in Violation of Fourth Amendment Standards*, 56 CORNELL L. REV. 507 (1971).

35. 39 Ill. 2d 617, 237 N.E.2d 460 (1968).

36. *Id.* at 619, 237 N.E.2d at 462.

37. 70 Cal. 2d 97, 447 P.2d 967, 73 Cal. Rptr. 575 (1968).

38. 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969).

39. 11 Cal. App. 3d 1193, 90 Cal. Rptr. 361 (1970).

constitutional protections do not apply to searches conducted by school officials. The emergency doctrine provided justification for a search by school officials in *People v. Lanthier*.⁴⁰ This line of cases creates a setting for *In re Fred C.*,⁴¹ in which a police officer participated in the search while acting as the agent of school administrators.

IN RE FRED C.

*In re Fred C.*⁴² concerns a search of a high school student, the discovery of dangerous drugs and marijuana in his possession, and his subsequent arrest on multiple charges related to drug possession. On January 19, 1971, Fred C., a seventeen-year-old minor who had been expelled from one of his regular high school classes, was required to spend a morning period in the outer office of the vice principal of the school which he attended. On that date, an unidentified third party informed a school official that Fred had been selling dangerous drugs and narcotics on the campus earlier in the morning. Relying on this information, two vice principals questioned Fred about the contents of his bulging Levi pockets and of a pouch which was tied to his belt. Fred revealed the monetary contents of the pouch, about twenty dollars, but refused to reveal the contents of his bulging pockets. Consequently, the vice principals requested the services of a police officer.

A juvenile officer responded to the call and assisted the school officials in conducting a search of Fred's pockets, which revealed dangerous drugs and marijuana packaged in the manner in which such drugs are generally sold. Subsequently, Fred was arrested on charges of possession of a restricted dangerous drug for the purpose of sale, possession of marijuana, and possession of a restricted dangerous drug.⁴³

The major questions raised in *In re Fred C.* were whether school officials were authorized to conduct the search and to solicit police assistance in carrying out the investigation, and

40. 5 Cal. 3d 751, 488 P.2d 625, 97 Cal. Rptr. 297 (1971).

41. 26 Cal. App. 3d 320, 102 Cal. Rptr. 682 (1972).

42. *Id.*

43. Following the arrest of Fred C., a petition for wardship pursuant to the CAL. WELF. & INST'NS CODE § 602 was filed in the Juvenile Department of the Superior Court of San Diego County. In March 1971, an order of the Superior Court of San Diego County declared Fred a ward of the juvenile court. A request for a rehearing was denied, and the minor appealed the judgment and order denying a rehearing. The Court of Appeal of the State of California, Fourth Appellate District, Division One, affirmed the Order of the Superior Court of San Diego County declaring the defendant to be a ward of the juvenile court. A petition for hearing in the California Supreme Court was denied in August 1972.

whether the search violated the constitutional guarantee against unreasonable search and seizure.⁴⁴ The court answered both questions affirmatively.⁴⁵

In California, as well as in other states, earlier cases have been based on similar fact situations: an informant's tip, a search conducted by a school official, the discovery of marijuana or other dangerous drugs, and the subsequent arrest of the suspected student.⁴⁶ *In re Fred C.* was different in that, although a police officer was brought in and participated in the search, the court held that the validity of the search need not be tested against constitutional standards. Rather, it treated the search as if it had been conducted by school officials alone and determined only whether a search by them was reasonable.

JUSTIFYING SEARCHES: RATIONALES FOR REASONABLENESS

Three major doctrines seem to have developed as justifications for criminal investigations in the schools: 1) the doctrine of *in loco parentis*, which according to its literal interpretation should strictly limit the school officials only to such courses of action as parents would reasonably be expected to take under like circumstances, usually without direct police involvement; 2) the emergency doctrine, which permits school authorities to respond to situations of "compelling urgency" by conducting an immediate search, usually with the active participation of police officers; and 3) the agency doctrine, which allows school administrators to enlist the assistance of police officers who act as their agents.

The Doctrine of In Loco Parentis

When student possession of prohibited items merely contradicts reasonable school rules and regulations or constitutes evidence of misconduct such as petty theft, the doctrine of *in loco parentis* permits school officials to conduct a limited search, usually without police involvement. This doctrine, which is the basis for the holdings in *Donaldson* and *Mercer*, considers that school administrators are acting in the place of parents in conducting the necessary investigation. As the dissenting judge in *Mercer* argues, however, involving the police is an unreasonable extension of the doctrine of *in loco parentis* because parents would not normally be expected to call the police automatically but would exercise discretion in choosing whether or not to do so, even after

44. 26 Cal. App. 3d at 323, 102 Cal. Rptr. at 684.

45. *Id.* at 325-26, 102 Cal. Rptr. at 685-86.

46. See cases cited at note 3 *supra*; see also *Mercer v. Texas*, 450 S.W.2d 715 (1970) and *People v. Stewart*, 63 Misc. 2d 601, 313 N.Y.S.2d 253 (1970).

discovering that the minor was in possession of illegal drugs.⁴⁷

Suppose that the parents of a teenage boy were confronted with circumstances similar to the fact situations in these cases. Assume that other parents informed them that a group of teenagers, including their son, had been smoking pot and probably hiding marijuana or other drugs in their homes. The parents would owe some moral duty to the children involved to prevent the continued use of drugs, but what would be the logical course of action for the parents to follow? Would they thoroughly search their son's room and, upon discovering a cache of drugs, call the police so that juvenile proceedings could be initiated and their son could be punished?

One might hope most parents would respect their son's privacy enough that they would not even attempt to search his room, especially without his knowledge or consent. Ideally, they would discuss the problem with their son, express their concern, and indicate their desire to help him. Depending upon his reaction and upon their relationship, they might question him about this possible involvement. If they determined that the boy was in fact using drugs, they might seek information on ways to overcome the problem and obtain medical treatment if necessary. However, the one course of action which most parents probably would not follow would be to enlist police assistance immediately to discipline their child.⁴⁸

Assuming that their information is reliable, school officials should take disciplinary action whenever students are suspected of possessing drugs on school premises. However, considering that the phrase *in loco parentis* literally means "in the place of parents," it would seem that any investigations justified under this doctrine should be limited to actions which parents would reasonably be expected to take under similar circumstances. In the present line of cases, the term *in loco parentis* is merely a convenient label utilized by the courts to indicate that the action of the school officials was legally permissible.

When school officials conduct disciplinary investigations, especially those which could result in direct police involvement, why

47. 450 S.W.2d 715, 721 (1970).

48. In many cities, authorities have established community service units through which they provide information about narcotics and assistance in identifying illegal drugs. For example, through the Analysis Anonymous Program in Santa Clara County, parents may secure envelopes at drop out stations (located at police departments, the sheriff's office, the health department, and other similar places), deposit a sample of the drug in an envelope (which is identified by a code number), and designate a telephone number at which they wish to receive a report of the analysis. The program also provides information on drug problems, a referral service, and other forms of assistance. However, the primary purpose of the program is to combat the use of drugs, not to punish the possible offender.

not recognize that they are acting strictly in their capacity as school administrators and judge their actions accordingly? Such recognition would avoid applying meaningless terminology suggesting they are acting in the place of parents even when selecting a course of action which most parents would not reasonably be expected to follow—the one which would most likely result in juvenile court proceedings being initiated against the minor.

As applied to *In re Fred C.*, parents who suspect their child of possessing narcotics would not be expected to enlist police assistance in conducting a search. Therefore, the action of school officials who enlist police assistance in making a disciplinary investigation should not be justified under the doctrine of *in loco parentis*.

The Emergency Doctrine

When prohibited items constitute health and safety hazards which threaten other students with harm or violence, the emergency doctrine permits school officials to conduct an immediate search, with or without direct police involvement, in response to the "compelling urgency" of the circumstances.⁴⁹ Therefore, the court in *Lanthier* determined that the search was reasonable because police assistance was enlisted in response to an urgent need to discover the exact nature of the evidence found in the student's locker. Likewise, in *Boykin* the potential threat of violence and harm to investigating school officials and to other students justified the warrantless search conducted by police officers.

Under true emergency circumstances, such as a threat from a concealed weapon, public policy should support and encourage school officials to solicit the special services of trained police officers; and in fact, school authorities would no doubt have a duty to enlist such assistance to protect the students for whose safety and well-being they are responsible. However, although the searches in both *Lanthier* and *Boykin* were justified by the courts under the emergency doctrine, an important distinction should be noted between narcotics and a concealed weapon as sources of potential danger to other students. The material in the briefcase might have constituted a health hazard, but the degree of potential danger was clearly less significant in *Lanthier* than in *Boykin*.

In *Lanthier*, the court stressed that the citizen complaint just-

49. As suggested in *People v. Lanthier*, 5 Cal. 3d 751, 488 P.2d 625, 97 Cal. Rptr. 297 (1971), under circumstances of "compelling urgency," a citizen complaint concerning a malodorous odor which may constitute a health hazard provides a satisfactory reason for initiating an immediate search. The complaint also sustains the burden of proof showing that the search was conducted within the emergency exception to warrant requirements.

ified the action taken by school officials. Certainly, one might expect school authorities to trace the odor and, after locating its source, remove that source to another area. However, once the odoriferous agent was found and isolated, one might question the need for immediately involving the police and for opening the briefcase before its owner might claim it. Would not an equally effective course of action have been for the school officials to have held the briefcase and contacted the owner to dispose of it or at least to have questioned him concerning its contents before calling the police?

The school officials in *Lanthier* might reasonably have been expected to deal with the problem without prompt assistance from authorities. In contrast, the need for immediate police involvement seemed more justified in *Boykin* because school officials were not properly trained to remove the gun from the possession of the suspected student or to deal with the hazard involved.

While both cases concern police involvement under the emergency doctrine, the rationale for enlisting police assistance is much weaker in *Lanthier*, where the potential danger resulting from a possible health hazard is questionable, than in *Boykin*, where the potential danger from a concealed weapon posed a very real threat to school officials and to other students.

The court in *Fred C.* cited *Lanthier* as the basis for its determination that reasonableness is the controlling standard. It also cited *Lanthier* to support the conclusion that the constitutional guarantee against unreasonable searches does not proscribe solicitation and use of professional assistance by school authorities in conducting an authorized search for good cause;⁵⁰ but the court made no specific reference to the emergency doctrine as justification for the search of Fred C.

Certainly the facts in *Fred C.* are not analogous to those of *Boykin* where the potential danger from a concealed weapon was clearly sufficient to justify police involvement in the initial search. The emergency doctrine might be applied to the fact situation of *Fred C.* only if it were determined that the school administrators had need to act quickly to protect other students from the presence of illegal drugs at the school. If the principals had believed that Fred was carrying a concealed weapon or that he might have endangered other people, their appeal for assistance might have been reasonable. One principal testified, however, that he had no reason either to believe or not to believe that Fred was carrying a weapon;⁵¹ and since the police officer who con-

50. 26 Cal. App. 3d at 326, 102 Cal. Rptr. at 685.

51. Record at 10.

ducted the search testified that he did not make a pat-down search before reaching into Fred's pockets,⁵² he apparently did not consider the possibility of danger from a concealed weapon.

Because the record in *Fred C.* suggests that there was neither an expectation of danger of such nature as to require the administrators to protect either themselves or other students nor provocation to search for anything other than illegal drugs, the search of Fred C. cannot properly be justified under the emergency doctrine.

The Agency Doctrine

The circumstances for application of the agency doctrine are presented by the fact situation of *In re Fred C.*, where the school officials requested police assistance in actually carrying out a search. Although the opinion does not denominate the agency doctrine as such, the court in *Fred C.* is the first to hold that a police officer acted as the "agent" of school administrators. While this rationale provides yet another basis for justifying police involvement, the doctrine also poses many problems regarding the permissible scope of the agency relationship.

In *Fred C.*, the school administrators had a duty to ascertain the truth of the information they received and to investigate any suspicious circumstances.⁵³ They were empowered to act under

52. Record at 20.

53. The prosecution argued that school authorities had the right to search Fred in the discharge of their official duties. This position is supported by *U.S. v. Coles*, 302 F. Supp. 99 (D.C. Me. 1969), in which evidence was admitted after being obtained by the administrative officer of a job corps center who conducted a search deemed to be a reasonable exercise of supervisory power. It is also supported by *Moore v. Student Affairs Comm. of Troy State Univ.*, 284 F. Supp. 725 (M.D. Ala. 1968), which upheld the right of college officials to enter and search a student's room without a warrant or consent. The validity of the regulation authorizing the search was determined by whether the regulation was a reasonable exercise of the college supervisor's authority and duty to maintain discipline and order or to maintain security.

The prosecution in *Fred C.* also contended that the juvenile officer had probable cause to arrest the student for illegal possession of drugs and to search his person incident to that arrest. Although the search was initiated and based upon unverified information supplied by an unnamed informant, the court held that the information plus the obvious bulge in the student's levi pocket constituted sufficient probable cause for the search. The prosecution relied on *People v. Benjamin*, 71 Cal. 2d 296, 303, 455 P.2d 438, 441-42, 78 Cal. Rptr. 510, 514 (1969), and *People v. Garcia*, 187 Cal. App. 2d 93, 9 Cal. Rptr. 493 (1960). *Benjamin* held that, although information provided by an informant was insufficient alone to justify the issuance of a warrant, the combination of the information with the officer's own observation did constitute sufficient probable cause for issuance of a warrant. *Garcia* held that information gathered by police from several independent sources plus the officer's surveillance of the defendant constituted probable cause for arrest without a warrant.

But see *People v. Reeves*, 61 Cal. 2d 268, 391 P.2d 393, 38 Cal. Rptr. 1

education code provisions which grant them broad investigatory powers, including the right to detain students upon school premises.⁵⁴ The court recognized that the school authorities had a statutory duty to protect students from the misconduct of another student engaged in selling dangerous drugs. Under the circumstances, the court observed, the principals had adequate provocation for conducting a search for dangerous drugs for such a search was within the scope of their duties.⁵⁵

Whether school officials were authorized to delegate their duties by soliciting the assistance of a police officer to conduct the search was an open question. The prosecution argued that there was no reason in logic or policy why the principal *should not* be permitted to have another individual, including a police officer, perform the task of searching for him, provided the scope of the search by the agent did not exceed the scope of the search which the school official himself could have conducted.⁵⁶ The court upheld this contention but did not provide a positive basis or explanation as to why the principals *should* be permitted to delegate their authority to the police officer!

If the school officials clearly had the right to delegate their authority to conduct disciplinary investigations, perhaps school standards based on education code provisions⁵⁷ should have continued to apply to the search. On the other hand, if it were determined that there was no proper basis for delegating administrative authority and that such delegation could result in undesirable consequences for the school, perhaps the school officials should not have been permitted to make the delegation or external standards should have been applied to judge the propriety and legality of such conduct.

(1964), where evidence was not admissible because there were no reasonable grounds for a search conducted by police who relied solely on the tip of an anonymous informant, without sufficient corroboration.

54. CAL. ADMIN. CODE tit. 5, § 301 (1969) requires that school officials exercise careful supervision over the moral condition of the schools and specifically prohibits the use or possession of tobacco, intoxicating liquor or other hallucinogenic or dangerous drugs or substances. CAL. EDUC. CODE § 10603(a) (West 1969) authorizes suspension of any student who has used, sold, or been in possession of narcotics or other hallucinogenic drugs. CAL. EDUC. CODE § 11701 (West 1969) charges school officials with a general duty to safeguard the health and physical development of pupils.

55. As indicated in the dissenting opinion in *Mercer v. Texas*, 450 S.W.2d 715, 720 (1970), an alternative argument suggests that, since the disciplinary power conferred upon school administrators is based on statutory provisions enacted by the state legislature, the school officials are in fact government officials. Hence, their acts should be considered official state action subject to constitutional protection.

56. Brief for Respondent at 9.

57. See note 54 *supra*.

The juvenile officer testified that, although he was searching for narcotics and intended to arrest the student if drugs were found, he was conducting an investigation for school officials and acting as their agent at the time he commenced the search of the student's pockets.⁵⁸ The court in *Fred C.* reasoned that since the school officials had cause to undertake the search the juvenile officer acting under school authority could also rightfully conduct the search and that the assistance rendered by the officer acting as the agent of the vice principals did not violate the constitutional rights of the student.⁵⁹

Under the circumstances of this case, it seems incongruous for the court to have validated the contention that the detective could act in a dual capacity: as a private citizen-agent of the school officials for the purpose of culminating the search and also as a police officer with the intent to effect an arrest upon discovering illegal drugs.

In *Mercer, Thomas G., and Stewart*, the students apparently gave coerced consent in response to the requests of school administrators to empty their pockets.⁶⁰ The school officials acted unaided in successfully conducting the necessary searches, and they summoned police officers for the purpose of initiating juvenile proceedings only after contraband was discovered. While the investigations were being conducted by the principals, standards for determining the reasonableness of the searches were based on education code provisions concerning disciplinary actions; whereas, once the police were involved in these cases, students were advised of their rights and criminal standards and procedures were applied.

The circumstances of *Fred C.* were distinguishable from the facts of the three prior cases because Fred refused to permit the search of his pockets. One principal testified that since he did not feel adequately trained to conduct a forcible search he requested the assistance of a police officer who was better qualified.⁶¹ When the school officials decided they were not qualified to continue the necessary investigation and solicited police assistance for the specific purpose of searching Fred's pockets, the cir-

58. *In re Fred C.*, 26 Cal. App. 3d 320, 325, 102 Cal. Rptr. 682, 685 (1972).

59. *Id.* at 324-25, 102 Cal. Rptr. at 684-85.

60. A student must give consent freely and knowingly in order to legalize what otherwise would be an illegal search. *Johnson v. U.S.*, 333 U.S. 10 (1948). Because of his subordinate position, a student might feel compelled to cooperate with school officials; however such cooperation would not necessarily constitute a waiver of the student's right to be secure from a search. See Knowles, *Criminal Investigation in the School: Its Constitutional Dimensions*, 4 FAM. LAW 153-54 (1964).

61. In this case, even a forcible search conducted by the principals acting alone probably would have been justified and supported by the holdings of prior cases.

cumstances of *In re Fred C.* changed significantly from the factual situations of *Mercer*, *Thomas G.*, and *Stewart* because the police officer became involved *prior* to the actual discovery of narcotics. In fact, the officer himself discovered them. The precedents of these prior related cases suggest that, whenever school administrators are unable to handle a disciplinary problem, the circumstances are no longer sufficiently within the scope of normal school operations for education code provisions and standards to apply. Instead, when outside assistance is required and the authority of school administrators is transferred to any person who is not an employee of the school district, external standards should replace those used to judge the actions of school officials. The cases also suggest that at whatever point in time a police officer becomes involved in an investigation the character of the search shifts from a school disciplinary inquiry to an official police investigation. However, cause to search will have already been established under standards provided by the education code,⁶² and under the decision in *Fred C.* entry of the police will not herald a stricter standard.

Under the circumstances of *In re Fred C.*, when the principals relinquished their authority and delegated their duties to the police officer, whether prior or subsequent to the actual discovery of illegal drugs, the standards for judging the reasonableness of the search should have automatically shifted from educational standards applied to school administrators to criminal standards applied to the actions of police officers.

Once the police detective became involved in the search of Fred C., the undertaking should have been considered a joint venture between school officials and the police, so as to constitute state action requiring the application of external standards and constitutional protections. Adequate consideration should have been given to the reliability of the information provided by the informant,⁶³ probable cause for search and arrest,⁶⁴ and constitutional guarantees proscribing unreasonable searches and seizures.⁶⁵ The outcome of the case might have been the same, but the court should have avoided introducing the agency doctrine as justification for searches actually conducted by a police officer.

In response to the unique fact situation of *In re Fred C.*,

62. See note 54 *supra*.

63. *Spinelli v. United States*, 393 U.S. 410 (1969); *McCray v. Illinois*, 386 U.S. 300 (1967).

64. *Beck v. Ohio*, 379 U.S. 89 (1964); *Carroll v. U.S.*, 267 U.S. 132 (1925).

65. U.S. CONST. amend. IV.

the court introduced a rationale justifying the search as a proper extension of school disciplinary authority. However, in concluding that the constitutional guarantee against unreasonable searches does not proscribe solicitation and use of professional assistance by school authorities in conducting an authorized search of a student for good cause, the court established a dangerous precedent. In effect, the ruling opens the proverbial Pandora's box, possibly permitting school officials to delegate their administrative authority and duties to a myriad of people who are not employees of the school system.⁶⁶ Although some such extensions would not seem dangerous from a constitutional standpoint, the potential dangers of increased use of *police* by school officials could seriously erode fourth amendment rights while neatly avoiding a state action designation.

SUMMARY AND SIGNIFICANCE OF RECENT CASES

A significant number of cases involving circumstances where school administrators conduct searches for illegal drugs have come before the courts within recent years. As suggested by the three basic doctrines courts have enunciated to justify such searches, there have been a variety of approaches concerning criminal investigations in the schools.

In most of the cases, police assistance and participation was enlisted *subsequent to* the initial search. The holdings indicate that the school authorities may utilize the information supplied by student-informers as the basis for searching the suspected student's locker or person and that they have the right and power to conduct searches and seizures which might not be reasonable by external standards.

*Stapleton v. Superior Court*⁶⁷ emphasizes the distinction between a search conducted by a private citizen and a search conducted by police. The three closely-related California cases of *Donaldson*, *Thomas G.*, and *Lanthier* establish that: 1) in conducting searches on school premises, school officials act as private citizens, not as public officials, 2) under the circumstances of these cases, fourth and fourteenth amendment protections do not

66. The holding could readily be extended to permit school officials to delegate their authority to a variety of specially-trained people, including physicians, social workers, psychiatrists, and many other professionals, whose services could be utilized to aid school administrators in carrying out their duties. Just as the assistance of the police officer was justified in *Fred C.*, the actions of other specially qualified professionals could also be justified as "reasonable" extensions of the broad administrative authority granted to school officials under education code provisions.

67. 70 Cal. 2d 97, 447 P.2d 967, 73 Cal. Rptr. 575 (1968).

apply; and 3) evidence discovered by school administrators is admissible in court trials.⁶⁸

By permitting independent searches for narcotics by school administrators acting as private persons and without the involvement or assistance of police officials, *Mercer* and *Stewart* complement the holdings of the California cases. In *Boykin*, the one exception where police were involved prior to the actual search, the direct participation of police officers in searching the student was upheld because of the important distinction between the nature of the danger from a concealed weapon as compared with the danger from narcotics.

In re Fred C. is distinctive because it is the first reported case in California where police assistance was enlisted *prior* to an initial search by school authorities when the student involved was suspected of possessing narcotics. The juvenile officer, who was deemed to be making the investigation for the school administrators and acting as the agent of the vice principals, was present and actively assisted them *before* any drugs were actually discovered.

The court concluded, nevertheless, that it was reasonable for the vice principals to enlist the professional assistance of the police officer in conducting an authorized search for good cause and that the use of police services was not constitutionally prohibited under the circumstances of the case.

The holding of *In re Fred C.* is important because it suggests that the scope of authority granted to school officials as private citizens includes the right to create an agency relationship with police officers whose assistance they enlist in conducting searches for narcotics.⁶⁹ In the view of this writer, this doctrine substantially undercuts the vital (and guaranteed) rights against unreasonable searches and seizures, and is plainly erroneous.

CONCLUSION

In determining the reasonableness of a search conducted under the authority of school officials, it is necessary to balance the scope of that authority against the student's right to constitutional

68. See discussion pp. 119-25 *supra*.

69. 26 Cal. App. 3d at 325, 102 Cal. Rptr. at 685. The fact situation where the school official requests the assistance of a police officer should be distinguished from one in which the police request the assistance of the school administrator. When the police arrive at the school and request the assistance of school officials, state action is more clearly evident and fourth amendment protections should apply. In fact, under these circumstances, the school official would probably have a duty to protect the student against an unlawful police investigation and to insure that the rights of the student were not violated through a wrongful search and seizure.

protection,⁷⁰ especially in light of the trend of recent cases toward an increasing disregard for the student's right to such protection.

The holding of *In re Fred C.* establishes the right of school officials to solicit police assistance in exercising the disciplinary powers granted to them under education code provisions. To insure the proper exercise of these powers by school administrators and to provide adequate protection for the constitutional rights of minor students, it is imperative that standards be established for determining: 1) the exact scope of school authority which should be extended to a police officer who is requested to act for school officials in exercising their disciplinary powers over students; 2) the extent of permissible police participation or involvement in searching students while the officer acts as an agent under the authority of school officials; and 3) the criteria or guidelines necessary to indicate when police participation in such searches is no longer within the proper scope of school authority but in fact becomes official state action.

The holdings of recent cases concerning the investigation and searches of students suspected of possessing illegal drugs lack strong precedents and fail to present definitive standards for police involvement.⁷¹ When there is no compelling danger to justify police involvement under the emergency doctrine but the seriousness of the offense is greater than that customarily associated with searches under the doctrine of *in loco parentis*, there is a particularly critical need to delineate the permissible scope of delegation of disciplinary authority.

The following standard is suggested: Whenever school officials enlist the assistance of a police officer to conduct a search on school premises, calling the police should automatically convert the investigation into a police action to which full constitutional

70. *In re Gault*, 387 U.S. 1 (1967), held that the Bill of Rights and fourteenth amendment constitutional guarantees of due process, which include procedural safeguards such as notice of charges, right to counsel, and the privilege against self-incrimination, apply to juvenile hearings. This holding suggests that a minor has a constitutional right to be secure in his person from all unreasonable searches and seizures. See also *In re Winship*, 397 U.S. 358 (1970); but see *McKiever v. Penn.*, 403 U.S. 528 (1971).

71. As more cases dealing with, or related to, the factual situation of *In re Fred C.* come before the courts, the holdings may be expected to define, clarify, and limit the permissible extent of police involvement and participation, particularly under the agency doctrine. See, e.g., *In re Christopher W.*, 29 Cal. App. 3d 777, 782, 105 Cal. Rptr. 775, 778 (1973), in which the court established a two-pronged test to determine whether the search of a locker by school officials was reasonable: the search must be 1) within the scope of the school's duties and 2) reasonable under the facts and circumstances of the case. The court noted that, although the doctrine of *in loco parentis* is applicable, the fourth amendment limits the power of school officials to acts that meet the stated requirements.

protections should apply. It is further suggested that the law require school officials to follow a procedure that would properly safeguard the rights of students. This procedure would require administrators to detain the student upon the school premises, request that the police obtain a proper warrant before conducting a search, and impose practical safeguards such as inquiring whether the student wished to call his parents (or perhaps even a family attorney). Further, administrators should remain in the presence of the student at all times, and determine if the student is aware of the nature of the investigation and understands his position and rights.

School officials are not normally qualified to offer advice on legal questions; but whenever substantial doubt exists concerning either the scope of properly delegated authority or the possibility of infringing upon the rights of the students by conducting a search, the primary concern of school officials should be to protect the rights of the student. Any lesser concern makes the protection of the fourth amendment meaningless for a segment of the population the Supreme Court has increasingly shown a desire to protect.

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